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June 2, 1999

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VIA FIRST CLASS MAIL

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, IL 60604

Re: Skinner Landfill

As you may be aware, American Premier Underwriters, Inc. ("American Premier") entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of Plaintiffs' claims regarding their past costs at the Skinner Site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between American Premier and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model De Minimis Consent Degree set forth in the December 7, 1995 Federal Register.

It is American Premier's understanding that EPA, Region V has now determined what information it will require in order to determine that American Premier qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report for the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

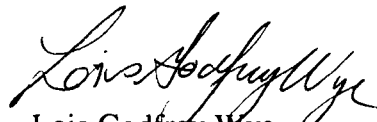
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Accordingly, I am enclosing the information requested by EPA for American Premier. I believe that this information amply demonstrates that American Premier is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. American Premier understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by American Premier in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, American Premier does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that American Premier is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, American Premier strongly urges EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Sincerely yours,



Lois Godfrey Wye

cc: Lori Lackner

American Premier Underwriters, Inc.

Settlement Amount: \$11,479.60

Excerpt from Allocator's Preliminary Report :

American Premier is the successor to the Penn Central Transportation Company. Based on affidavits submitted to me, Penn Central ceased railroad operations on April 1, 1976 when those operations were transferred to Consolidated Rail Corporation.

Penn Central operated railroad facilities at the following locations within 75 miles of the Site during the relevant years: Sharonville, Undercliff, Ivorydale, Dayton, Springfield, Riverside and Lawrenceburg. In addition, it operated numerous train stations in the area. Also, the company leased land to others and conducted shipping operations for its lessees, but it had no control over their waste disposal.

Penn Central interviewed a former senior paralegal, Eileen Drelick, who is now the research administrator for a law firm where she is custodian of historical records for the railroad. She was unable to find any business relationship with Skinner.

It also interviewed a former supervisor, Lawrence Baggerly, who was in charge of a project to reconstruct the Sharonville railroad yard from 1964 - 1965. He also is not aware of any business relationship between the railroad and Skinner.

Type of Waste. Ray Skinner described an operation to creosote ties in the Skinner lagoon beginning as early as the 1960s. He also described seeing the disposal of drums containing creosote residues:

Q. How many times did you see creosote drums brought to the Skinner Landfill from the Penn Central Railroad?

A. I seen them several times over the period of years.

Q. And we're going into the '60s now?

A. '60s right on up to the '70s.

Q. And when drums were brought in, were they brought in on the same vehicle?

A. Yes, the exact same vehicle.

Q. So the vehicle that was used to bring in the waste really never changed?

A. Never changed. It come from Sharon yard. The truck used to be parked at the Sharon shop down there.

R. Skinner Depo., p. 544, 547. Mr. Skinner himself worked at the Sharon Yard. R. Skinner Depo., p. 547. Ray Skinner also said that creosote drums did not reach the Site after April 1976. R. Skinner Depo., p. 545-46.

The railroad claims that it never participated in either practice. It always used independent commercial tie treatment companies and never treated its own ties. Mr. Batterly stated in an affidavit that the railroad did not, and would not, creosote ties at Skinner or purchase ties that had been treated there. Mr. Baggerly recalled that the railroad used second-hand, previously used, railroad ties, called "FIT" ties in all reconstruction work in yards in the Skinner area because new ties were expensive. FIT ties had been treated with creosote years before when they were new. New ties were only used in railroad tracks in high density traffic areas. All of Penn Central's new ties were treated by commercial tie-treating companies. During the 1950s through the 1970s, Penn Central was not laying new track in the Skinner area, I was also advised. The company stated that it had a very strictly enforced policy regarding the purchase of railroad ties which required authorization from corporate headquarters and employees-inspectors would visit tie treatment plants to ensure adherence to industry standards. Ray Skinner's description of the Skinner creosoting operation would not meet such standards. And as noted earlier, the company does not have information of any other disposal at the Site.

While it does not necessarily decide who is right in this factual debate, the presence of creosote and railroad ties in the lagoon area is supported by the testimony of Lloyd Gregory who observed both when EPA dug a trench in the lagoon area in 1976. Lloyd Gregory Depo., p. 35-37.

Mr. Skinner also described other wastes from "Penn Central - Conrail." He was aware that Penn Central became Conrail. He suggested that wastes from the operations under either name reached the Skinner Landfill. The wastes included empty creosote drums with residues prior to April 1976, and rags, spikes, signs, shop trash, floor sweepings, railroad car flooring, and journal boxes. In the "later years" the waste was primarily ties, spikes and metal. R. Skinner Depo., p. 539, 542. Elsa Skinner testified that she remembered billing both Penn Central and Conrail. Her log does not reflect either name although that is not meaningful given the holes that exist in the log.

Waste-in Amount. Ray Skinner estimated the disposal of more than 100 cys per year while he had familiarity with the frequency of use and estimated that usage began in the 1950s and continued over several decades.

Penn Central points out that journal boxes are welded onto rail cars, that no other witness identified Penn Central except Elsa Skinner, that Elsa Skinner did not say what she billed Penn Central for, that its historic investigation did not produce a connection to the Skinner Landfill, and that, as noted above, it would not have creosoted ties in the lagoon.

The most persuasive component of the Penn Central submittal are the affidavits of Mr. Baggerly. In particular, his second affidavit recounts an interview of Leonard Stahl, a former Supervisor of Track in the Skinner Landfill area. Mr. Baggerly reports that Mr. Stahl knew "old man Skinner" and was familiar with the Skinner Landfill by location. He is reported to have told Mr. Baggerly that, to Mr. Stahl's knowledge, no waste was taken to the Skinner Landfill by Penn Central.

The testimony of Ray Skinner is sufficiently direct and first hand that there is an irreconcilable conflict between it and the affidavit testimony provided by American Premier. I am unable to conclude on this record that no waste reached the Site from Penn Central. After reviewing all of the Ray Skinner references to "Penn Central - Conrail," and taking into account his description of waste types and time periods, and having carefully reviewed American Premier's comprehensive position paper and its *nine exhibits*, I have elected instead to assign Penn Central a default figure of 500 cys for the time period prior to April 1, 1976 to resolve the conflict short of further discovery and a trial on witness credibility since it does not appear to me that a summary judgment could be awarded in view of the disputed facts here.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste in Cys	Liquid Waste in Gallons	Solid Waste In Total Cys 372908	Percentage	Liquid Waste In Total Gallons 262262	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem Dyne	Rest of Chem- Dyne	Total
AMERICAN PREMIER UNDERWRITERS INC	500	0	372908	0.1341%	262252	0.0000%	0.01%	0.00%			0.01341%